CURRENT LEGISLATION.

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MEDIATION AND ARBITRATION STATUTES.—More than a century ago it was perceived in Europe that many questions between employer and employee were frequently arising which could best be settled out of the civil law courts; and a court[1] was formed in France in 1806 having jurisdiction of all matters relating to employment between employer and employee. From this tribunal the large and intricate system of the Industrial Courts has developed.[2] It is interesting to note, however, that some of the Industrial Courts do not have jurisdiction over collective disputes, but confine themselves to individual controversies.[3] Great Britain and the United States have been more interested in the settlement of collective disputes, and have allowed the common law courts to deal with individual cases. The earliest attempt in England to provide a peaceful mode for the settlement of industrial disputes was the passage of a law in 1867 allowing the formation of an industrial court for purposes of conciliation.[4] Pennsylvania enacted a similar statute in 1883,[5] but it was a total failure and was repealed in 1893.[6] Canada, Australia and New Zealand have been the leaders in providing legislation for the peaceful settlement of disputes between employer and employee,[7] seeking new ways and means to enforce arbitration and avert strikes and lockouts, while England and the United States (until recently) have been content simply to provide cumbersome machinery which has been seldom used, and then found pitiably wanting in important crises.

These statutes as they exist today seem to fall naturally into five classes. The first class are those statutes which are simply "permissive" and provide for the appointment of a board of mediation or arbitration by the governor or some other agency, on the request of the parties for

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[1]Conseil de prud'hommes.

[2]For history of these courts, see U. S. Bureau of Labor Bulletin, 1912, Vol. 24, p. 273.

[3]In Germany and Geneva jurisdiction over collective disputes is an important function of the Industrial Courts, but in France and Basle and Zurich their jurisdiction is confined to individual controversies. However, Russia, Roumania, Holland, Belgium and Italy absolutely prohibit strikes in public utility services. In Spain, Portugal and the Ottoman Empire such employees are prohibited from striking unless certain conditions have been previously complied with. In Germany and Austria strikes by railroad or postal service employees are made impossible by the assumption that membership in a militant trade union is incompatible with loyalty and with the safety of the state.

[4]The Councils of Conciliation Act, 30 & 31 Vict. c. 105.

[5]1 Purdon's Dig. p. 357, §§ 67-80.

[6]1 Purdon's Dig. p. 361, §§ 81-90.

[7]Canada: Conciliation Act of 1900 and Railway Disputes Act of 1903 consolidated into Conciliation and Labour Act, Rev. Stat. Can. 1906, Vol. II, c. 96, p. 1743, and superseded by Industrial Disputes Investigation Act 1907, (The "Lemieux Act") 6-7 Ed. VII c. 20; Stat. Can. 1907, p. 235, which act was adopted by the Transvaal in 1907, Stat. L. Transvaal, Vol. III, p. 2377. Stat. New South Wales 1912, No. 17 (with severe penalties for strikes). Consol. Stat. New Zealand 1908, No. 82, p. 762.

arbitration.[8] When there is no demand by the parties for arbitration, the machinery lies inactive, and strikes and lockouts continue at will. Even when the board has been requested to act, there is no way to enforce the award so that it becomes effective for any length of time. The second class contains those statutes in which a positive duty is placed on a state official or commission to attempt conciliation, or failing in that, to persuade the parties to arbitrate if possible, and is superior to the first class only in that the machinery for arbitration is presented to the disputants, with no power, however, to enforce acceptance.[9] The next division shows a real step forward in giving the board of arbitration power to make a complete investigation into the dispute, and to publish a report of their findings, even when conciliation has failed and the parties have refused arbitration.[10] The theory is that the board's findings, presumably based on a fair and impartial investigation, will bring the pressure of public opinion to bear on an unreasonable disputant in such a way as to cause him to yield. However, no matter how urgent is the apparent advantage or necessity of accepting the findings, acceptance cannot be legally compelled. The fourth class makes any strike or lockout preceding arbitration illegal, and imposes penalties for a breach.[11] Once arbitration has been had, however, the award cannot be enforced, and after it has been filed and published the parties may proceed in any way they see fit. The last class absolutely prohibits strikes and lockouts at any time, and makes the award final and binding on the parties.[12]

An examination of these statutes shows that the machinery provided for arbitration and mediation purposes is practically the same in all cases. A special office is created, or the governor, with the advice

[8]Sess. Laws Alaska 1913, c. 70, p. 268; Park's Ann. Code Ga. 1914, Vol. I, § 2141 (j); Supp. Code Iowa Ann. 1913, c. 8-B, § 2477-n, p. 958; Gen. Stat. Kan. 1909, § 372, p. 97; Laws Me. 1909, c. 229, p. 301; Pub. Acts Mich. 1915, No. 230, p. 387 (jurisdiction limited to railroads, mines and public utilities); Rev. Code Mont. 1907, c. II, Art. 1, § 1670, p. 474; Vernon's Sayles' Tex. Civ. Stat. 1914, Vol. I, Art. 71, p. 83; Laws Vt. 1912. No. 190, p. 243; U. S. Stat. L. 62, 1913-1915, Vol. XXXVIII, p. 103.

[9]Rev. Code Idaho 1908, Vol. I, c. 25, p. 647; Laws Ohio 1913, § 871-22 (8), p. 102, as amended by Laws Ohio 1915, § 871-22 (8), p. 510; Purdon's Dig. (Pa.) Vol. V, p. 5296; Laws S. C. 1916, No. 545, p. 935; Consol. Laws N. Y. 1909 (Wadhams) Vol. III, § 140, p. 2202; Rev. Stat. Neb. 1913, c. 35, § 3633, p. 1038 (board shall mediate at governor's order); Rev. Laws Nev. 1912, Vol. I, § 1929, p. 555 (governor himself shall mediate); Gen. Stat. Conn. 1902, § 4708, p. 1125; Comp. Laws Utah 1907, Title 47, p. 568.

[10]Sess. Laws Colo. 1915, c. 180, § 27, p. 577; Ill. Stat. Ann. (J. & A.) Vol. III, § 5268, p. 2856; Laws Ind. 1915, c. 118, p. 507; Marrs' Ann. Rev. Stat. La. Vol. II, § 4002, p. 1411; Laws Md. 1916, c. 406, § 11, p. 814; Acts Mass. 1909, c. 514, p. 725, as amended by Acts Mass. 1914, c. 681, p. 668; Gen. Stat. Minn. 1913, § 3940, p. 896; Laws N. H. 1911, c. 198, § 3, p. 547; Ann. Code Wash. 1910, c. 6, § 6599, p. 1157; Comp. Stat. Wis. 1915, c. 110-a, § 2394 (8), p. 1713; Rev. Code Idaho 1908, c. 25, p. 647; Laws Me. 1909, c. 229, p. 301 (governor may order investigation when controversy affects public interests); Rev. Stat. Mo. 1909, Vol. II, § 7802, p. 2461; Rev. Code Mont. 1907, § 1670, p. 474 (if only one party agrees to arbitrate the hearing and award is public).

[11]Sess. Laws Colo. 1915, c. 180, § 30; Stat. Canada 1907, p. 235; Stat. Law Transvaal, Vol. III, 1907-1910, No. 20, § 1909, p. 2377; Stat. New S. W. 1912, No. 17.

[12]Consol. Stat. New Zealand 1908, No. 82, p. 762.

and consent of the senate, appoints two men, who receive a regular salary and hold their offices for a specified length of time.[13] One member must be an accredited representative of the labor interests, and the other identified with the interests of the employer, and in a majority of cases they must not be of the same political party.[14] After their appointment and ratification they must choose a third member of the board who generally acts as chairman. Often it is provided that the parties to a controversy may each appoint another member to sit on the board. In two states the disputants may nominate several fit persons skilled in the business over which the controversy exists, from which number the board shall appoint one from each side to act as expert assistants. It is the duty of these experts to obtain reports on wages, methods and grades of work prevailing in similar business enterprises in the state, and to aid the board with advice and suggestions.[15] The majority of the states do not limit the scope of the board's activities to certain employments, but give them jurisdiction in all controversies in which there are more than a certain number of employees concerned.[16] The Federal Acts, however, have been confined to interstate railroads, and the Canadian Act to a limited field.[17] In all cases where the parties consent to arbitration, they must maintain the *status quo ante* pending the award, and must promise to obey it for a limited period thereafter, unless a thirty or sixty days' notice in writing is given by one side of a contrary intention. Often the award is filed in the district court, where exceptions may be taken, and the court required to review any points of law involved in the award.[18] The board is given power to subpoena witnesses, administer oaths, and in some cases punish for contempt. Where employees are required to sign a petition for arbitration, their names must be kept secret. Only those who sign are affected by the award.

How is an award to be enforced?[19] The Canadian system, adopted by some of our states, of bringing an informed public opinion to bear

[13]Laws Ohio, *supra*, § 1; Sess. Laws Colo., *supra*, § 1; Gen. Stat. Conn., *supra*, § 4708; Ill. Stat. Ann., *supra*, § 5268; Laws Ind., *supra*, § 2; Supp. Code Iowa, *supra*, § 2477-n-1 (disputants make nominations); Gen. Stat. Kan., *supra*, § 372 (district court appoints board on petition to arbitrate); Marrs' Ann. Stat. La., *supra*, § 4002; Gen. Stat. Minn., *supra*, § 3940; Rev. Stat. Mo., *supra*, § 7802; Rev. Code Mont., *supra*, § 1670; Rev. Stat. Neb., *supra*, § 3633; Rev. Laws Nev., *supra*, § 1929; Laws N. H., *supra*, § 3; Comp. Laws Utah. *supra*, § 1324; Laws Vt., *supra*, § 1.

[14]Gen. Stat. Conn., *supra*, § 4708; Rev. Code Idaho, *supra*, § 1427; Pub. Acts Mich., *supra*, § 4; Vernon's Sayles' Tex. Civ. Stat., *supra*, Art. 71; Ann. Code Wash., *supra*, § 6599.

[15]Acts Mass., *supra*, § 14, Rev. Code. Mont., *supra*, § 1674.

[16]Usually the board is given jurisdiction if twenty-five or more employees are concerned, in some instances where there are less.

[17]Industrial Disputes Act, *supra*, includes only public utilities and mining industries.

[18]Rev. Code Idaho, *supra*, § 1435; Sess. Laws Colo., *supra*, § 37; Ill. Stat. Ann., *supra*, § 5273; Rev. Laws Nev., *supra*, § 1931; Laws Ohio, *supra*, § 1871-38 (appeal to Supreme Court for "unreasonableness or unlawfulness"); Vernon's Sayles' Tex. Civ. Stat., *supra*, Art. 81; see also Peachy *v.* Holmes (1904) 7 West. Australia L. R. 89 (review of award by court); *Ex parte* Brennan (1915) 15 State Rep. New South Wales 173 (extent of Industrial Arbitration Court's jurisdiction).

[19]Under New South Wales Act 1912, see Collie Coal Co. *v.* Watts (1913) 15 West. Australia L. R. 97 (jurisdiction of court to enforce award).

on the parties has not been entirely successful; the burden is placed on an expert and tactful administration of the law, and the results have not been all that was expected.[20] The New Zealand method is to offer inducement to employers and labor unions to enter collective agreements, after which standards of hours and wages are fixed by the interested parties instead of the community. Disagreements may then be settled by industrial arbitration courts, and the award enforced, as the parties have agreed to waive objections to possible interference with their constitutional rights.[21] In the United States, the constitutional difficulty facing legislators is a grave one, and whether such legislation would be upheld by the courts is speculative. The right to labor is a commodity and a property right,[22] and any legislation that aims at making an award by a court of arbitration final must carefully avoid infringing the "due process" and "liberty of contract" provisions, and the Thirteenth Amendment.[23] However, constitutional and practical difficulties have been encountered in legislating comprehensively respecting wages and hours and other industrial relations, and it is possible at least that a scheme for the arbitration of labor disputes (of public utilities, anyway) including a final and binding award might be both constitutional and effective.[24] As it stands now, there can be little doubt that the few successes hitherto obtained in arbitrating such differences have been due more to the skill, tact, and known integrity of the arbitrators than to any legal or formal authority granted by legislation.

THE FEDERAL GRAIN STANDARDS ACT.—Though not a world-wide custom, the practice of buying and selling grain by grades is thoroughly established in the United States.[1] No two terminals, however, grade

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[20]In Canada in 1913 there were 113 strikes with time losses of 1,287,678 working days. In England in 1913, with over 300 conciliation boards in existence, there were 1,497 strikes with time losses of nearly 12,000,000 working days. 36 Can. Law Times, 207; see also Commonwealth Arbitration Reports (published annually) containing awards made and conferences of the Court of Arbitration of Australia.

[21]See article on "Constitutional Aspects of Compulsory Arbitration of Industrial Disputes on Public Utilities" by Mr. T. I. Parkinson in The Academy of Political Science, New Series, No. 1, March 1917.

[22]Gray *v.* Building Trades Council (1903) 91 Minn. 171, 97 N. W. 663; Bogni *v.* Perotti (Mass. 1916) 112 N. E. 853; see 16 Columbia Law Rev. 683.

[23]Adair *v.* United States (1907) 208 U. S. 161, 28 Sup. Ct. 277; Bailey *v.* Alabama (1910) 219 U. S. 219, 31 Sup. Ct. 145; Coppage *v.* Kansas (1914) 236 U. S. 1, 35 Sup. Ct. 240; *Ex parte* Lennon (1897) 166 U. S. 548, 17 Sup. Ct. 658; United States *v.* Scott (D. C. 1906) 148 Fed. 431; Renaud *v.* State Court of Mediation (1900) 124 Mich. 648, 83 N. W. 620; State *ex rel.* Haughey *v.* Ryan (1904) 180 Mo. 32, 79 S. W. 429.

[24]Mr. Parkinson in his article, *supra*, has pointed out certain hitherto unquestioned statutes which in the interest of the public welfare restrict the freedom of the individual to cease work. See Robertson *v.* Baldwin (1896) 165 U. S. 273, 17 Sup. Ct. 326; Butler *v.* Perry (1915) 240 U. S. 328, 36 Sup. Ct. 258.

[1]U. S. Dept. of Agriculture, Yearbook, 1915, pp. 296-297. In Argentina, wheat is not graded, but is sold to have a certain specific weight, and premiums on or discounts from the standard price are made, according as the actual weight is greater or less than that specified.